

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Carriage of the Transmissions
of Digital Television Broadcast Stations)

Amendments to Part 76
of the Commission's Rules)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 98-120

REQUEST FOR EXTENSION OF TIME TO FILE REPLY COMMENTS

The Office of Communication, Inc. of the United Church of Christ, Media Access Project, the Benton Foundation, the Center for Media Education, and the Civil Rights Forum ("*UCC et al.*") respectfully request, pursuant to part 1.46 of the Commission's rules, 47 CFR § 1.46, a 28-day extension within which to file reply comments in the above docket. Under such an extension, reply comments would be due on December 22, 1998.

A short extension of time is critical to allow members of the public to participate fully in this docket. *UCC et al.* were the only parties filing detailed initial comments in this proceeding on behalf of members of the public. Without an extension, the Commission will likely receive comments only from parties representing the various interested industries, but will not receive any detailed comments from entities representing the interests of citizens. Since the purported purpose of the "must carry" requirement being debated here is to ensure that viewers have access to free, over-the-air television, the Commission's failure to provide adequate time to permit *UCC et al.*'s participation in the reply comment phase would be particularly egregious.

There is good cause for granting this extension. The attorney primarily responsible for representing *UCC et al.* in this proceeding, Gigi B. Sohn, is also a member of the Advisory Committee

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on Public Interest Obligations of Digital Television Broadcasters ("Gore Commission"). The Gore Commission, originally scheduled to have completed its work by October 1, 1998, has now been extended for several additional months and is currently scheduled to submit its final report on December 18, 1998. *See* Executive Order 13102, 63 Fed. Reg. 52125 (Sept. 29, 1998). The final edits on the Gore Commission report and any separate statements that members may choose to submit are now due on November 23, 1998, one day before the current reply comment deadline in this docket.

Because of the change in schedule, Ms. Sohn has been required to dedicate significantly more time to her work on the Gore Commission than originally anticipated. This delay was not foreseen, and could not be changed to accommodate the FCC's comment deadlines in this docket.¹ As one of the key public interest representatives on the Commission, Ms. Sohn has been asked to submit several proposals for consideration by the full Commission as its work extended past its original deadline. Further, she has dedicated significant resources to developing a set of recommendations that will assist the FCC, as well as Congress and the Administration, to adopt digital television policies that will serve the public and the broadcast industry.

It is not possible for Ms. Sohn's colleagues to write these reply comments. With a professional staff of three, Media Access Project does not have sufficient staff to assign individuals in addition to Ms. Sohn to represent UCC *et al.* in this proceeding. Further, Ms. Sohn's expertise in digital television matters is critical to a full and fair representation of UCC *et al.* in this proceeding, and will be of significant help to the Commission as it considers digital must-carry policies in this docket.

¹At the last stage of this proceeding, the Commission granted a 25-day extension of time for filing comments at the request of ALTV so that its board members could hold a face-to-face meeting to discuss the issues raised in the Commission's *NPRM. Order Extending Time*, CS Docket No. 98-120, DA 98-1719 (Aug. 7, 1998).

The tight deadlines of completing the Gore Commission report are exacerbated by the overwhelming number and breadth of comments filed in this proceeding. UCC *et al.*'s counsel anticipate reviewing over 600 pages of material in order to draft reply comments in this proceeding, which is only a fraction of the total number of pages filed. For example, the NAB alone submitted 52 pages of comments, to which it attached seven appendices containing an additional 60-70 pages of material.

Although no public notice has been issued, UCC *et al.* are aware that the Association for Maximum Service Television, Inc. ("MSTV") has requested that the Commission not further extend the deadlines in this proceeding. Request for FCC Enforcement of Existing Deadlines and Expedited Action, CS Docket No. 98-120 (filed Oct. 27, 1998) ("*MSTV Request*"). For the reasons discussed below, the brief extension requested here will not affect the marketing and/or commercial deployment of digital television and thus not implicate MSTV's concerns.

First and most important, those stations most in need of a must-carry rule will not be affected by a four-week delay in this proceeding. As UCC *et al.* explained in their comments in this docket, UCC *et al.* Comments, CS Docket 98-120 (filed Oct. 13, 1998), the broadcast stations that are most likely to require a Commission rule mandating carriage are those on cable systems in smaller markets and those unaffiliated with a major broadcast network. Such stations' financial resources will not support a transition to digital television in the immediate future. Under the Commission's own rules, these stations have until May 1, 2002 to construct their digital facilities.

By contrast, the broadcasters who will complete the transition to digital in the next two or three years do not need must-carry rules to obtain carriage on cable systems. Network-owned stations have significant leverage to obtain transmission of their digital signals from cable operators because

cable operators are dependent upon network programming to remain commercially viable. Just as these stations presently negotiate retransmission consent agreements without reliance on the Commission's must-carry rules, they will be able to obtain transmission on cable networks' digital tiers.

In addition, as UCC *et al.* detailed in their comments, legal, technical, and economic uncertainties demonstrate that must-carry rules are not necessary in the immediate future, and indeed may be counterproductive. UCC *et al.* Comments at 5-6. Adopting must-carry rules prior to the resolution of these issues may stifle the growth of new DTV services, postpone viewer acceptance of digital TV, and ultimately delay the broadcasters' return of analog spectrum. *Id.*

Thus, contrary to MSTV's contention, *see MSTV Request* at 3, the digital compatibility issues will not be affected by a four-week delay in this proceeding.² This is particularly true given the FCC's current approach favoring negotiations without mandates from the FCC. *See, e.g.,* Glen Dickson, "DTV-cable Interface Accord Reached," *Broadcasting & Cable* at 12 (Nov. 2, 1998) (describing industry agreement on "Firewire" standard).

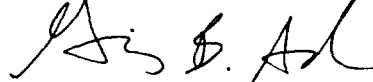
Conclusion

UCC *et al.* is requesting a brief, four-week extension of time. This is the minimum amount of time necessary for members of the viewing public to be fully represented in this proceeding. The Commission has already granted the broadcast industry an extension in this proceeding; representatives

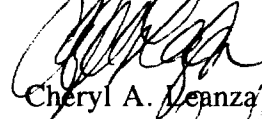
²If, however, as MSTV claims, the Commission truly must resolve certain digital compatibility issues in this proceeding without even a four-week delay, the Commission should proceed forthwith on those issues, contained in ¶¶ 17-31 of the *NPRM*, while extending the comment deadline for the remainder of the *NPRM* by four weeks.

of the viewing public are now making a similar request. UCC *et al.* and their counsel possess particularly relevant expertise with respect to the public's ability to receive free, over-the-air television via cable systems. The Commission should not consider those issues without benefit of UCC *et al.*'s reply comments.

Respectfully submitted,



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